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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 404

MILTON AMSEL AND CHARLES AMSEL, D/B/A AMSEL DENTAL LABORATORY,

Appellants,

vs.

CLARENCE G. BROOKS, CLIFFORD J. BUCKLEY, WILSON B. CONRAN, ET AL.

APPEAL FROM THE SUPREME COURT OF ERRORS OF CONNECTICUT

STATEMENT AS TO JURISDICTION

MARGARET DRISCOLL,
JOHN J. DARCY,
Counsel for Appellant.

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THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

MILTON AMSEL AND CHARLES AMSEL, D/B/A AMSEL DENTAL LABORATORY

Appellants,

vs.

CLARENCE G. BROOKS, of the City and County of New London, State of Connecticut, CLIFFORD J. BUCKLEY, of the City of Bridgeport, County of Fairfield, State of Connecticut, WILSON R. CONRAN, of the City and County of Hartford, State of Connecticut, LEWIS FOX, of the Town of South Norwalk, County of Fairfield, State of Connecticut, and CLARENCE E. PETERSON, of the City of Rockville, County of Tolland, State of Connecticut, Comprising the members of the Dental Commission of the State of Connecticut,

Respondents.

STATEMENT IN SUPPORT OF JURISDICTION

The appellants Charles Amsel and Milton Amsel in support of the jurisdiction of the Supreme Court of the United States to review the above-entitled cause on appeal, respectfully represent:

A

Statutory Provision Sustaining Jurisdiction

The statutory provision which sustains jurisdiction of the Supreme Court of the United States is Section 1257(2) of Title 28 of the United States Code, reading to the extent relevant here, as follows:

> "Section 1257 State Courts; appeal; certiorari
> Final judgments or decrees rendered by the highest

court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

"(2) By appeal, where is drawn in question the validity of a Statute of any state on the ground of its being repugnant to the constitution, treaties or laws of the United States, and the decision is in favor of its validity."

B

Statute of State the Validity of Which Is Involved

The Statute of the State of Connecticut, the validity of which has been sustained by judgment of the Supreme Court of Errors of the State of Connecticut, the highest Court of said State, as not being violative of or repugnant to the Constitution and laws of the United States is Section 1696c, 1953 Supplement to the General Statutes of Connecticut, 1949 Revision. This statute is copied in full and attached hereto as Appendix 1.

C

Date of Judgment and Date of Application for Appeal

The date of the judgment of the Supreme Court of Errors of the State of Connecticut which is now sought to be reviewed was May 25, 1954. Appellants' and appellees' motions for reargument were denied June 10, 1954. The decision of the Supreme Court of Errors became final upon denial of the parties' motions for reargument. Connecticut Practice Book Section 441. The time for taking the appeal began to run from the date of the denial of the parties' motions for reargument, to wit June 10, 1954. *Market Street Railway Company* v. *Railroad Commission of California*, 1945, 324 U. S. 548, rehearing denied 324 U. S. 890. *Dept. of Banking State of N. Y.* v. *Pink*, N. Y. 1942, 317 U. S. 264, rehearing denied 318 U. S. 802.

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The date on which the application for appeal was presented and the appeal allowed was September 8, 1954.

D

Nature of Case and Rulings

The plaintiffs have been carrying on the business of a dental laboratory in New Haven and Bridgeport. They are not licensed dentists. They furnish, supply, construct, reproduce, and repair prosthetic dentures, bridges, appliances and other structures to be worn in the human mouth. When they construct an original denture, they do so from an impression or cast made by a duly licensed dentist. In conducting their business, the plaintiffs advertise to the public that they will furnish, supply, reproduce or repair prosthetic appliances. They contract directly with the members of the public and deliver their products directly to their customers.

At its 1953 session, the General Assembly enacted "An Act concerning the Practice of Dentistry." 1953 Supplement, Sections 1696c, 1697c. The first section of the act was a reenactment, in part, of Section 4458 of the General Statutes, as amended by Section 921b of the 1951 Supplement in certain particulars not pertinent to this case. Section 4458 defined what conduct constituted the practice of dentistry. The 1953 legislation now being questioned enlarged the definition to embrace any person "who, directly or indirectly, by any means or method, furnishes, supplies, constructs, reproduces or repairs any prosthetic denture, bridge, appliance or any other structure to be worn in the human mouth, except on the direction of a duly licensed dentist, or who places such appliance or structure in the human mouth or attempts to adjust the same, or delivers the same to any person other than the dentist upon whose direc-

tion the work was performed, or who advertises to the public, by any method, to furnish, supply, construct, reproduce or repair any prosthetic denture, bridge, appliance or other structure to be worn in the human mouth or gives estimates on the cost of treatment, or who shall advertise or permit it to be done by sign, card, circular, handbill or newspapers, or otherwise indicate that he, by contract with others or by himself, will perform any of such operations."

By complaint dated July 20, 1953, returnable to the Superior Court for Fairfield County, appellants asked for a declaratory judgment that the statute in question was unconstitutional. The complaint was amended to include a prayer for an injunction against the enforcement of the statute.

On November 5, 1953, appellants and respondents stipulated on an agreed statement of facts to reserve the cause to the Supreme Court of Errors for its advice and decision.

The decision of the Supreme Court of Errors was announced on May 25th, 1954, wherein it was decided, with certain exceptions, that the statute in question was constitutional. Appellants and respondents filed motions for reargument both of which were denied June 10, 1954.

The decision of the Supreme Court of Errors is attached hereto as Appendix 2. Appellants' and Respondents' motions for reargument are attached hereto as Appendix 3 and 4 respectively.

Question #1 of the questions reserved to the Supreme Court of Errors read as follows:

> "1. Is Section 1 of Public Act No. 486 (Section 1696c 1953 Supp. to the General Statutes) unconstitutional because it violates the rights of plaintiffs under the 14th amendment to the Constitution of the United States?"

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The above question incorporated clauses (a), (b) and (c) of Paragraph 12 of plaintiffs' complaint which read as follows:

"12. Public Act No. 486 is illegal and void for the following reasons:

"(a) Because it is in contravention of Article XIV, Section 1 of the Amendments to the Constitution of the United States and Article I, Section 9 of the Constitution of the State of Connecticut in that the plaintiffs will be deprived of their property without due process of law, by reason of the fact that they may not engage in their business of repairing and reproducing prosthetic dentures except on direction of a duly licensed dentist.

"(b) Because in enacting Public Act No. 486 the Connecticut General Assembly has, in contravention of Article XIV, Section 1 of the Amendments to the Constitution of the United States, arbitrarily deprived the plaintiffs of their right, privilege and liberty of entering into contracts with the public for the repair and reproduction of prosthetic dentures, by reason of the fact that said prosthetic dentures may be delivered only to the duly licensed dentist on whose direction said dentures were repaired or reproduced.

"(c) Because it is in contravention of Article XIV, Section 1 of the Amendments to the Constitution of the United States and Article I, Section 1 of the Constitution of the State of Connecticut in that the plaintiffs are being denied equal protection of the laws of the State of Connecticut, by reason of the fact that the General Assembly arbitrarily and discriminatorily purports to grant to the duly licensed dentists of the State of Connecticut the exclusive right to contract for the sale of

and to sell prosthetic dentures in derogation of a right presently enjoyed by the plaintiffs."

The decision of the Supreme Court of Errors held that the statute in question was constitutional with the exception of the provision relating to advertising. With respect to the latter provision, the Court said as follows:

> "It is proper for the legislature to forbid the advertising of acts and conduct which it properly defines as the practice of dentistry. In the instant case, however, the statute is so sweeping in its effect that it even forbids advertising of certain enumerated acts which are permitted if they are performed under the direction of a duly licensed dentist . . . The connection between such a drastic and unreasonable regulation and the public welfare is so tenuous that, upon principles hereinbefore stated, the portion of the statute relating to advertising cannot be legally justified."

The Court then went on to hold that the advertising provision was severable from the remainder of the act. 141 Conn.

The Court, in summing up the nature of plaintiffs' claims, said that "(1) it (the statute) serves only the interest of licensed dentists and fails to furnish the public with any protection; (2) its provisions do not clearly define the act or acts which constitute a violation of it;" 141 Conn.

Concerning the first of plaintiffs' claims the Court, after first defining the word "direction" as used in the phrase "except on the direction of a duly licensed dentist" as being "peculiarly appropriate and understandable", went on to say that "The legislative intent, clearly and understandably expressed, is that the Acts defined shall constitute the practice of dentistry and shall not be performed

unless a duly licensed dentist prescribes them, supervises their performance and approves their result. Without that direction, they are prohibited to a layman." Direction thus defined, the statute, the Court declares is "not rendered unconstitutional merely because it incidentally benefits a limited number of persons."

With respect to the second claim cited by the Court, that the Statute fails to clearly define what act or acts constitute a violation of it, the Court held that the statute under discussion meets the test of affording some comprehensible guide, rule or information as to what must be done and what must be avoided, so that the ordinary member of society may know how to comply with its requirements.

E

Court's Ruling on Validity of the Act

The Supreme Court of Errors having ruled on appellants' question as to the validity of the Statute under the 14th Amendment to the Constitution of the United States, and upon all of the questions raised in appellants' complaint, the Supreme Court of the United States may review the decision of the Supreme Court of Errors of the State of Connecticut.

F

Substantiality of Questions Involved

The appellants respectfully represent that the questions involved in their appeal to the Supreme Court of the United States are of a substantial nature. It is an established rule that an appeal will not be dismissed for want of a federal question, unless the contentions of the appellant are "clearly not debatable and utterly lacking in merit." *Hamilton* v. *Regents of Univ. of Calif.*, 293 U.S. 245, 258.

The issues presented to this court by the appellants' assignment of errors have not previously been directly ruled

on by this Court in respect to the validity of legislation regulating dental laboratories, although there is considerable legislation on the same subject in other states.

The issue raised by appellants that the Connecticut General Assembly exceeded its police power in enacting Section 1696c, thereby depriving appellants of liberty and property without due process and denying appellants of equal protection of the law involves a consideration of the scope and intent of the statute itself.

There is no question as to the Connecticut General Assembly's power to regulate the business of the appellants. The repair and reproduction of prosthetic dentures is a business affected with the health of the public and the legislature is within its powers when it undertakes properly to regulate such a business. *Watson* v. *Maryland* 218 U.S. 173.

The intent of the statute in question is to regulate the repair and reproduction of prosthetic dentures. The legislature, in attempting to implement that intent, declared through the statute that the repair and reproduction of proshetic dentures, among other things, were acts of practicing dentistry "except on the direction of a duly licensed dentist." The statute nowhere provides for examinations, supervision or forms of direction to be exercised by the directing dentist. The statute also contains clauses which declare advertising by persons such as appellants to be an act of practicing dentistry but the provision was declared unconstitutional by the Supreme Court of Errors. 141 Conn.

The Supreme Court of Errors, however, upheld the validity of the statute as a whole after defining "direction" to mean a prescription, supervision of performance and approval of results. 141 Conn. Thus the Supreme Court of Errors has defined for future application of the statute the meaning of the term "direction" so as to require a prescription for the repair and reproduction of prosthetic

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dentures, that the performance of one carrying out the prescription be supervised, and that the filled prescription be approved by the directing dentist.

Appellants claim that if the intent of the Connecticut legislature was, as the Supreme Court of Errors interpreted it, that "direction" included the requirement of a prescription then such a requirement in and of itself would have sufficed to protect the public if such prescription was executed by a competent dental technician. The statute, however, extends the privilege of repair and reproduction of prosthetic dentures to "any person", there being no requirement that such person have any qualification to engage in that kind of work.

Appellants claim that there is a patent contradiction in the statute, enacted to protect the public health, which in effect permits any person to perform services conditionally classified as acts of practicing dentistry.

The statute as construed further states that the work, which is being done on prescription, must be supervised by the directing dentist, approved by him, and that the completed dentures may be delivered to no one but the directing dentist.

Appellants contend that the statute as defined is arbitrary and discriminatory in its practical operation. The United States Supreme Court has the power to determine for itself the practical operation of a statute, and whether or not such a statute, as construed by the state courts, will operate to deprive appellants of constitutional rights under the Fourteenth Amendment. *Lindsey* v. *Wash.*, 301 U. S. 397, 450, and cases cited.

If a prescription is to be required before appellants may perform their services, it is unreasonable that they should have their work supervised by a dentist, involving thereby the presence of a dentist at appellants' place of business

or appellants relinquishing their place of business in order to obtain space in the office of a dentist. It is also unreasonable and arbitrary to require appellants' work to be approved by a dentist, if it is recognized in the first instance that appellants are capable of receiving prescriptions.

The practical effect of the approval requirement places appellants wholly under the control of dentists, economically as well as professionally. It is not apparent from the statute whether appellants in the course of their business are to serve dentists or the particular customer, and whether they are to look to the dentist or to the customer for payment for such service. Appellants are subject to all of the duties of employees but receive none of the benefits; they must assume all the risks of enterpreneurs, but may exercise no control over the operation or practices of their business.

Appellants are also prohibited from delivering the completed prosthetic dentures to any person but the directing dentist, a prohibition which, in view of the regulatory limitations inherent in the term "direction" arbitrarily interferes with appellants' right to deal directly with the public and subjects appellants to the status of occasional employees of various dentists. The requirement that the dentures be delivered to the directing dentist in practical effect arbitrarily takes away appellants' former right to enter into contracts with the public for the sale of their services, such right under this statute being exclusively granted to practicing dentists. For the foregoing reasons appellants submit that a substantial federal question is presented, reviewable by the United States Supreme Court.

The issue raised by appellants that the statute in question deprived them of liberty without the due process involves a consideration of whether or not the statute is sufficiently clear and unambiguous so that the appellants and other citizens may know when they are violating its terms

and when they are not. Violation of the statute subjects the violator to criminal and civil penalties. Section 1698c, 1953 Supplement.

The Supreme Court of Errors held that the law was sufficiently explicit concerning what acts or conduct would be a violation of its provisions and that the ordinary member of society would know how to comply with its provisions. 141 Conn.

Appellants contend that the act as written is vague and ambiguous. What the direction of a duly licensed dentist means has been partially defined by the Supreme Court of Errors. However, the definitions supplied fail to provide appellants with a fair guide to the practice permissible under the act. Their dilemma is intensified in view of the ruling of the Court regarding advertising. From that ruling it would appear that appellants may advertise their business, advertise that they may contract to do such business, but they are prohibited from carrying on such business except under certain vague conditions.

Appellants contend that the facts stipulated by the parties to the controversy afford a definitive statement of their respective positions. Appellants' motion for reargument specifically requested a construction of the Supreme Court of Error's definition of the term "direction" as the definition would apply to appellants. The motion was denied.

Appellants therefore claim that the statute as construed leaves them wholly uncertain as to their rights, duties and responsibilities under it and that, in view of the penalties provided for the violation of the statute, a substantial federal question is presented reviewable by the United States Supreme Court.

MARGARET DRISCOLL,
JOHN J. DARCY,
Counsel for Appellants.

APPENDIX I

THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

MILTON AMSEL AND CHARLES AMSEL, D/B/A AMSEL DENTAL LABORATORY

Appellants,

vs.

CLARENCE G. BROOKS, of the City and County of New London, State of Connecticut, CLIFFORD J. BUCKLEY, of the City of Bridgeport, County of Fairfield, State of Connecticut, WILSON R. CONRAN, of the City and County of Hartford, State of Connecticut, LEWIS FOX, of the Town of South Norwalk, County of Fairfield, State of Connecticut, and CLARENCE E. PETERSON, of the City of Rockville, County of Tolland, State of Connecticut, Comprising the members of the Dental Commission of the State of Connecticut,

Respondents.

1953 SUPPLEMENT GENERAL STATUTES OF CONNECTICUT, SECTION 1696c PRACTICE OF DENTISTRY DEFINED, STUDENTS EXCEPTED.

Any person who shall own or carry on a dental practice or business, or who, by himself or by his servants or agents or by contract with others, shall perform any operation on or make examination of, with intent of performing or causing to be performed any operation on, the human teeth or jaws, or who shall describe himself by the word "Dentist" or letters "D. D. S." or "D. M. D.," or in other words, letters or title in connection with his name which shall in any way represent such person as engaged in the practice of dentistry, or who shall diagnose or treat diseases or lesions of the human teeth or jaws, replace lost teeth by artificial ones, attempt to diagnose or correct malposition thereof, or who, directly or indirectly, by any means or method, furnishes, supplies, constructs, reproduces or repairs any prosthetic denture, bridge, appliance or any other structure to be worn in the human mouth, except on the direction of a

duly licensed dentist, or who places such appliance or structure in the human mouth or attempts to adjust the same, or delivers the same to any person other than the dentist upon whose direction the work was performed, or who advertises to the public, by any method, to furnish, supply, construct, reproduce or repair any prosthetic denture, bridge, appliance or other structure to be worn in the human mouth, or gives estimates on the cost of treatment, or who shall advertise or permit it to be done by sign, card, circular, handbill or newspapers, or otherwise indicate that he, by contract with others or by himself, will perform any of such operations, shall be deemed as practicing dentistry or dental medicine within the meaning of this chapter. Any person who, in practicing dentistry or dental medicine, as defined in this section, shall employ or permit any other person except a licensed dentist to so practice dentistry or dental medicine shall be subject to the penalties provided in section 1698c. The provisions of this chapter shall not prevent any practicing physician or surgeon from treating lesions or diseases of the mouth and jaws or from extracting teeth. No provision of this section shall be construed to prevent regularly enrolled students in and graduates of dental schools approved as provided in this chapter or medical schools approved as provided in chapter 207 from receiving practical training in dentistry under the supervision of a licensed dentist or physician in a dental or medical school in this state or in any hospital, infirmary, clinic or dispensary affiliated with such school.

APPENDIX II

DECISION OF SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT, APRIL TERM, 1954

Action for a declaratory judgment determining the constitutionality of the 1953 act concerning the practice of dentistry, and for an injunction, brought to the Superior Court in Fairfield County and reserved by the, Conway, J., for the advice of this court.

The plaintiffs, who are partners doing business as the Amsel Dental Laboratory, brought an action in the Superior Court against the defendants, who comprise the dental commission of the state of Connecticut, asking for a judgment declaring unconstitutional "An Act concerning the Practice of Dentistry," being No. 486 of the Public Acts of 1953. General Statutes, Cum. Sup. 1953, Sections 1696c, 1697c. By stipulation, the case has been reserved for the advice of this court upon the questions set forth in the footnote 1.

The stipulated facts may be abbreviated as follows: The plaintiffs have been carrying on the business of a dental laboratory in New Haven and Bridgeport. They are not licensed dentists. They furnish, supply, construct, reproduce, and repair prosthetic dentures, bridges, appliances and other structures to be worn in the human mouth. When they construct an original denture, they do so from an impression or cast made by a duly licensed dentist. In conducting their business, the plaintiffs advertise to the public that they will furnish, supply, reproduce or repair prosthetic appliances. They contract directly with the members of the public and deliver their products directly to their customers.

At its 1953 session, the General Assembly enacted "An Act concerning the Practice of Dentistry." Cum. Sup. 1953,

Sections 1696c, 1697c. The first section of the act was a reenactment, in part of Section 4458 of the General Statutes, as amended by Section 921b of the 1951 Cumulative Supplement in certain particulars not pertinent to this case. Section 4458 defined what conduct constituted the practice of dentistry. The 1953 legislation now being questioned enlarged the definition to embrace every person "who, directly or indirectly, by any means or method, furnishes, supplies, constructs, reproduces or repairs any prosthetic denture, bridge, appliance or any other structure to be worn in the human mouth, except on the direction of a duly licensed dentist, or who places such appliance or structure in the human mouth or attempts to adjust the same, or deliver the same to any person other than the dentist upon whose direction the work was performed, or who advertises to the public, by any method, to furnish, supply, construct, reproduce or repair any prosthetic denture, bridge, appliance or other structure to be worn in the human mouth. . . ." By Section 2 of the 1953 act (section 1697c), the dental commission is required to appoint three licensed dentists to be a grievance committee in each county. Section 1698c of the 1953 Cumulative Supplement should be mentioned at this point because it prescribes penalties for violations of the statutes relating to the practice of dentistry and gives the dental commissioners power to apply to the courts for an injunction restraining such violations. The first section of the 1953 act, which is the one questioned directly, appears as follows (See Appendix I). If the plaintiffs continue to operate their business as they have been doing, they will be subject to the penalties and to an injunction.

The statute now challenged purports to regulate the conduct of a lawful business or profession. Its enactment was an exercise of the police power of the state. To be a constitutional exercise of that power, it must operate in a field

wherein the public health, safety and welfare are affected. *State* v. *Porter*, 94 Conn. 639, 642, 110 A. 59. So far as we are aware, the power of the legislature to regulate the practice of dentistry in this state has never been questioned on grounds of constitutionality. See *State* v. *Faatz*, 83 Conn. 300, 76, A. 295; *Jones* v. *Dental Commission*, 109 Conn. 73, 145 A. 570.

The portion of Section 1696c hereinbefore quoted contains a description of two separate and distinct series of acts. We shall discuss first the part which specifically concerns the making and repairing of prosthetic dentures, and later in the opinion we will deal with the part which pertains to the advertising of those services. The plaintiffs concede that the reproduction and repair of prosthetic dentures is a calling affected with the public interest and is a proper field for the exercise of the police power of the state. They claim, however, that the statute under attack is unconstitutional because (1) it serves only the interest of licensed dentists and fails to furnish the public with any protection; (2) its provisions do not clearly define the act or acts which constitute a violation of it; and (3) it is an unwarranted delegation of legislative power to the dental commissioners. For these reasons, the plaintiffs charge that the statute is an unwarranted and arbitrary interference with their right to carry on a lawful business and subjects them to arrest, conviction and penalties for a crime which is stated in general and indefinite terms, all in violation of Section 1 of the fourteenth amendment to the federal constitution and of Sections 1 and 10 of article first, as well as articles second and third, of the constitution of Connecticut.

The plaintiff's claims under (1) and (2) are predicated upon the assertion that while the law classifies the repair and reproduction of prosthetic dentures as acts constitut-

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ing the practice of dentistry, it excepts these very same acts when they are undertaken on the direction of a duly licensed dentist. The dentist, it argues, is under no duty to examine the patient or the work to be done, either before or after he directs the patient to the dental laboratory. Furthermore, the person whom he directs to do the work need possess no particular skill or training. In short, the requirement of the statute is met when a patient is directed by a dentist to some dental laboratory. Thereafter, it is entirely up to the dentist how much further direction and supervision he shall give. Consequently, no real protection is furnished to the public and no clear and understandable definition of what constitutes a violation of the statute is furnished.

When the constitutionality of legislation is in question, it is the duty of the court to sustain it unless its invalidity is beyond a reasonable doubt. *Gionfriddo* v. *Windsor*, 137 Conn. 701, 705, 81 A.2d 266. All police legislation is subject, in the courts, to the test whether it serves the public health, safety and morals at all and whether it does so in a reasonable manner. *State* v. *Hillman*, 110 Conn. 92, 105, 147 A. 294. It cannot parade under the banner of service to the commonweal and restrict or destroy private rights in the furtherance of some special interest. The regulation and prohibition it imposes must have a rational relationship to the preservation and promotion of the public welfare. *Carroll* v. *Schwartz*, 127 Conn. 126, 129, 14 A.2d 754; *Gionfriddo* v. *Windsor*, supra, 706; 2 Cooley, Constitutional Limitations (8th Ed.) pp. 1231, 1329 n.6. The case of *Hart* v. *Board of Examiners of Embalmers*, 129 Conn. 128, 132, 26 A.2d 780, illustrates this point aptly. In that case, we held unconstitutional a statute which provided that the board of examiners of embalmers should issue a funeral director's license when an application was made upon the

ground that the former licensee was dead or disabled and his financial interest in the funeral home had been transferred to the applicant, who was related to him by blood or marriage. We ruled that such a ground could have no reasonable relation to the public health, safety or welfare. It is a rule of statutory construction, however, that courts are bound to assume that the legislature, in enacting a particular law, did so upon proper motives and to accomplish a worthy objective. *State ex rel. Higgins* v. *Civil Service Commission*, 139 Conn. 102, 107, 90 A.2d 662; *Walsh* v. *Jenks*, 135 Conn. 210, 222, 62 A.2d 773. Furthermore, courts must, if possible, construe a law so that it is effective. *DeMond* v. *Liquor Control Commission*, 129 Conn. 642, 645, 30 A. 2d 547; *Connecticut Light & Power Co.* v. *Southbury*, 95 Conn. 242, 247, 111 A. 363; *Balch* v. *Chaffee*, 73 Conn. 318, 320, 47 A. 327. It is to be presumed that legislatures do not deliberately enact ineffective and unconstitutional laws. *Antman* v. *Connecticut Light & Power Co.*, 117 Conn. 230, 237, 167 A. 175; *Sage-Allen Co.* v. *Wheeler*, 119 Conn. 667, 679, 179 A. 195; *State ex. rel. Rourke* v. *Barbieri*, 139 Conn. 203, 208, 91 A.2d 773.

The statute prescribes that certain acts, described in detail therein, shall not be done "except on the direction of a duly licensed dentist." It forbids the placing of any structure or appliance in the human mouth or the attempt to adjust such an appliance, or the delivery of it to anyone other than the dentist "upon whose direction the work was performed." The word "direction" is one of common usage. It means "(a)ct of directing; guidance; management; . . . (t)hat which is imposed by directing; command; also, authoritative instruction; information as to method . . ." Webster's New International Dictionary (2d Ed.) 12 Words & Phrases (Perm. Ed.) p. 476. The word, as used in the statute, is peculiarly appropriate and understandable. It

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sets forth a clear concept of the respective responsibilities of the dentist and the dental laboratory. Moreover, the making, fitting and repair of artificial dentures constitute a calling intimately concerned with the public health. One who pursues it is required to have an accurate knowledge of the physiology of the teeth and the parts of the human body associated with them, as well as a high degree of technical skill. No one has an inalienable right to pursue a profession or vocation which requires special knowledge or peculiar skill and is therefore a proper subject for supervision in the interest of the public welfare. *In re Application of Dodd*, 131 Conn. 702, 705, 42 A.2d 36.

The wording of the statute, when read in the light of the special capability required for the successful performance of the acts therein described, leads to but one conclusion. The legislative intent, clearly and understandably expressed, is that the acts defined shall constitute the practice of dentistry and shall not be performed unless a duly licensed dentist prescribes them, supervises their performance and approves their result. Without that direction, they are prohibited to a layman. So construed, the statute is designed to serve the public health effectively and is not an unreasonable or arbitrary abuse of the police power. A statute which is otherwise within the police power or serves a public purpose is not rendered unconstitutional merely because it incidentally benefits a limited number of persons. *Silver* v. *Silver*, 108 Conn. 371, 378, 143 A. 240; *State* v. *Heller*, 123 Conn. 492, 500, 196 A. 337; *Lyman* v. *Adorno*, 133 Conn. 511, 516, 52 A.2d 702; *State ex rel. Higgins* v. *Civil Service Commission*, 139 Conn. 102, 106, 90 A.2d 862; *Warner* v. *Gabb*, 139 Conn. 310, 313, 93 A.2d 487.

The plaintiffs further claim that the statute is unconstitutional because it fails to state with sufficient clarity and precision what act or acts constitute a violation of it.

The requirement of statutory specificity has the dual purpose of giving adequate notice of the acts which are forbidden and of informing one accused of the nature of the offense charged so that he may defend himself. The terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties. *Connally* v. *General Construction Co.*, 269 U. S. 385, 391, 46 S. Ct. 126, 70 L. Ed. 322. If, however, a practicable or sensible effect may be given to a penal statute, it is generally sustained. *State* v. *Andrews*, 108 Conn. 209, 213, 142 A. 840; *State* v. *Zazzaro*, 128 Conn. 160, 165, 20 A.2d 737; *State* v. *Carpenter*, 60 Conn. 97, 102, 22 A. 497; *Pacific Coast Dairy* v. *Police Court*, 214, Cal. 668, 676, 8 P.2d 140; *State Board of Dental Examiners* v. *Savelle* 90 Colo. 177, 185, 8 P.2d 693; *People* v. *Sarnoff*, 302 Mich. 266, 270, 4 N. W. 2d 544. It must afford some comprehensible guide, rule or information as to what must be done and what must be avoided, to the end that the ordinary member of society may know how to comply with its requirements. *People* v. *Grogan*, 260 N. Y. 138, 145, 183 N. E. 273. The statute under discussion meets this test. We hold that it is sufficiently explicit concerning what acts or conduct would be a violation of its provisions to meet constitutional requirements.

While this is a case of first impression in Connecticut, similar legislation has been declared constitutional in other states. *Weill* v. *State ex rel.* Gaillard, 250 Ala. 328, 34 So.2d 132; *Lasdon* v. *Hallihan*, 377 Ill. 187, 192, 36 N.E. 2d 227; *State* v. *Williams*, 211 Ind. 186, 195, 5 N. E. 2d 961; *Board of Dental Examiners* v. *Jameson*, 64 Cal. App.2d 614, 149 P.2d 223; see *Commonwealth* v. *Finnigan*, 326 Mass. 378, 379, 96 N.E.2d 715; *People* v. *Gurevich*, 191 Misc. 338,

339, 75 N.Y.S.2d 919, aff'd, 274 App. Div. 767, 81 N.Y.S.2d 138; 70 C.J.S. 840, Section 10 (e).

We have been considering, up to this point, the portion of the statute which pertains to the making, fitting and delivery of prosthetic appliances. We have concluded that it meets constitutional requirements both as a regulation in furtherance of the public health and as the definition of a crime subject to a penalty. We shall now consider the part which contains the prohibition against advertising. The language of this prohibition is all-inclusive. The advertising prohibited is not limited to that which would announce a willingness to render services in contravention of the law. The verb "advertise" means, generally, "(t)o give notice to; to inform"; in the sense here employed, the definition "(t)o give public notice of; to announce publicly esp(ecially) by printed notice; as, to advertise a sale; hence, to call public attention to, esp(ecially) by emphasizing desirable qualities, in order to arouse a desire to purchase, invest, patronize, or the like, is probably the meaning best suited to the word as used in the statute. Webster's New International Dictionary (2nd Ed.). But the word and this definition of it cover a wide range, from a name and notation of a business or profession painted on a door, through the whole gamut of means and devices for arousing public interest and patronage, up to and including a nationwide radio and television broadcast. Americans are unusually adept in the field of advertising. It is fair to say that one never knows how the next appeal for his patronage of a particular brand of cigarette, tooth paste or false teeth may be enticingly presented. There is no common, generally understood meaning to this all-embracing term. It is of some moment to note that legislation affecting other professions and callings which ban ad-

vertising in one form or another contains in more or less detail the particular acts or forms of advertising which are outlawed. General Statutes, Section 4493, optometrists; Section 4522, opticians; Section 4485, pharmacists; Section 4407, physiotherapy technicians; Section 4397, natureopaths; Section 4387, chiropractors. Some kinds of advertising, specifically enumerated, are denied by law to dentists. Cum. Sup. 1953, Section 1695c.

It is proper for the legislature to forbid the advertising of acts and conduct which it properly defines as the practice of dentistry. In the instant case, however, the statute is so sweeping in its effect that it even forbids the advertising of certain enumerated services which are permitted if they are performed under the direction of a duly authorized dentist. If this law is valid, those in the business generally performed in a dental laboratory are prohibited from doing anything to make known the availability of their services. They are dependent exclusively upon the customers a licensed dentist may send to them. The connection between such a drastic and unreasonable regulation and the public welfare is so tenuous that, upon the principles hereinbefore stated, the portion of the statute relating to advertising cannot be legally justified. We hold this portion to be unconstitutional.

One further claim requires brief discussion. The plaintiff charges that Section 1696c, when operative in connection with the other sections of the act concerning the practice of dentistry, is an unconstitutional delegation of legislative power to the dental commission because it leaves it to the discretion of the commission to decide what is a violation of the law. This claim is groundless. The legislation in question, except that portion which we have herein declared to be invalid, provides adequate standards of guidance for the action of a grievance committee established

under Section 1697c and the commission, both of which are merely administrative agencies. *State* v. *Stoddard*, 126 Conn. 623, 628, 13 A.2d 586; *State* v. *Vachon*, 140 Conn. 478, 484, 101 A.2d 509.

To hold that legislation is valid as to one part and invalid as to another is not anomalous but consonant with principles long established. *State* v. *Wheeler*, 25 Conn. 290, 299. Where two or more parts of a statute are challenged, the test is whether they are so mutually connected and dependent as to indicate a legislative intent that they should stand or fall together. *Branch* v. *Lewerenz*, 75 Conn. 319, 324, 53 A. 658. If that test is applied to this case, it is clear that the part we sustain is separate and distinct from the part we hold to be invalid. They are entirely severable provisions. *Walsh* v. *Jenks*, 135 Conn. 210, 217, 62 A.2d 773; *State* v. *Feingold*, 77 Conn. 326, 333, 59 A.211; *State* v. *McKee*, 73 Conn. 18, 29, 46 A. 409; *Miller* v. *Colonial Forestry Co.*, 73 Conn. 500, 505, 48 A. 98.

Our answer to the questions propounded in the reservation is that General Statutes, Cum. Sup. 1953, Section 1696c, is valid, except the part which contains the prohibition against advertising, which is invalid.

No costs will be taxed in this court in favor of any party.

In this opinion the other judges concurred.

Footnote 1: Is Section 1 of Public Act No. 486 (Section 1696c, 1953 Supplement to the General Statutes) unconstitutional because it violates the rights of the plaintiffs under the 14th amendment to the Constitution of the United States?

APPENDIX III

SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

Fairfield County

Superior Court Case No. 90317

May 27, 1954

Case No. 3919

AMSEL DENTAL LABORATORY

vs.

DENTAL COMMISSION OF THE STATE OF CONNECTICUT

MOTION TO REARGUE

Plaintiffs in the above entitled action respectfully move that the said action be reargued before the Supreme Court of Errors on the following grounds:

1. (a) That the ruling by this court in its decision announced May 25, 1954, that the prohibition contained in Section 1696c 1953 Supp. relating to advertising was unconstitutional failed to specify whether both provisions relating to advertising were invalid, or, if only one of the provisions, which one; and if the ruling applies to both of said provisions would the court's holding regarding the severability of both provisions be reconsidered.

(b) That if the provision relating to advertising as follows: ". . . or who shall advertise or permit it to be done by sign, card, circular, handbill or newspapers, or otherwise indicate that he, *by contract with others or by himself*, will perform any of such operations, shall be deemed as

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practicing dentistry or dental medicine. . . ." has been declared invalid, may the plaintiffs enter into contracts direct with the public for the sale of their services and give *estimates of costs for* such services? (emphasis added).

(c) That the prohibition against advertising relative to contracting and the giving of estimates of costs for such services are so connected with the remainder of the act so as to render said act inoperative and unworkable if such provision is declared invalid.

2. That the court's construction of the statute, namely, that the "legislative intent . . . . is that the acts defined shall constitute the practice of dentistry and shall not be performed unless a duly licensed dentist *prescribes them, supervises their performance* and *approves their results*" (emphasis added) is broader than the term "direction" and the requirement that the dentures be "delivered" to the directing dentist, and gives such terms a meaning not apparent from the act itself or inherent in the accepted meaning of the terms.

3. The court's ruling regarding the term "direction" fails to specify whether or not such term, in addition to the definition used in paragraph 2, above, shall require that the dentist direct or send the patient, or the dentures, or both to the plaintiffs or whether the plaintiffs may accept dentures direct from the public and work on the same consistent with the requirements stated. If the plaintiffs may not accept dentures direct from the public under the court's construction of this term, it is submitted that the court's ruling regarding advertising is impliedly in conflict with this portion of the statute.

4. That the act as construed remains ambiguous to the extent that:

(a) it fails to specify whether or not the prescription requirement need be in writing or may be oral;

(b) it fails to specify whether or not the "supervision of their performance" requires that plaintiffs be physically in the presence of a duly licensed dentist; and

(c) it fails to specify whether or not if subsequent to the dentist's approval the plaintiffs may then charge the patient for services rendered and deliver such approved dentures to the patient.

Respectfully submitted,

The Plaintiffs
By JOHN J. DARCY,
Their Attorney.

APPENDIX IV

SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

3919

Fairfield County March Term, 1953

Amsel Dental Laboratory vs. Dental Commission of the State of Connecticut

June 1, 1954

DEFENDANTS' MOTION FOR REARGUMENT

The defendants in the above entitled case hereby move, within the time allowed by the rules of court (P.B. Sec. 441) for a re-argument of the portion of the decision of the Supreme Court of Errors which holds that the part of Section 1696c, 1953 Supplement to the General Statutes,

which contains the prohibition against advertising is invalid, upon the following grounds:

1. Though the questions asked in the reservation to the Supreme Court of Errors (rec. 12) are general in character, they were not intended to enlarge upon the specific claims of unconstitutionality stated in the complaint (Par. 12 rec. 3 and amend. rec. 6).

2. The specific claims of unconstitutionality do not embrace a claim that the statute in question is unconstitutional because it prohibits dental laboratories from advertising.

3. The brief of the Plaintiffs in this Court contains no claim of unconstitutionality on the ground that advertising is forbidden to the Plaintiffs.

4. It was therefore not necessary to have the question of constitutionality of the statute as it pertains to the prohibition against advertising, decided in this case.

5. Since the constitutionality of the remainder of said Statute has been sustained, the plaintiffs can deal with the public only through a duly licensed dentist who has to direct the work to be done and to whom the delivery of the finished product must be made. To permit the plaintiffs to advertise to the public indiscriminately is repugnant to the provisions of the remaining portion of the statute which has been held to be constitutional.

6. This Court in its opinion stated:

> "It is proper for the Legislature to forbid the advertising of acts and conduct which it properly defines as the practice of dentistry."

There is no prohibition in the statute against laboratories or technicians advertising their services to the dental profession upon whom they are exclusively dependent for

patronage; Association and Trade Journals, in wide circulation among dental profession, may be used to advertise such services. The Court in its decision that the prohibition against advertising is unconstitutional has confused the services which can be legally rendered by a dental laboratory under the constitutional portion of the statute, with a product or commodity. A Technician in a dental laboratory is a necessary adjunct to the service performed by licensed dentists and is comparable to a law clerk in a lawyer's office. It is inconceivable that a lawyer may not advertise, but his law clerk may. Since the prohibition against advertising can validly be enforced against a licensed dentist, a highly inequitable result is reached if the dental laboratory which must do its work under the immediate supervision of a licensed dentist may advertise to the general public.

7. To permit a dental laboratory to advertise will necessarily result in a secret arrangement between the dental laboratory and a licensed dentist whereby the orders obtained from the public through advertising will be funneled to the office of such licensed dentist upon the understanding that such dentist will direct the work to be done to the laboratory in question. Such a result is bound to affect the interests of the public adversely and is bound to lead to the situation where the dental laboratory will control the actions of the licensed dentist to whom such work is funneled.

8. It is a well known fact that many licensed dentists have in their offices technicians who, under supervision, do repairing and processing of prosthetic dentures and appliances. Under the decision of this Court, it might be construed that these technicians may now advertise their services to the general public and in that way obtain partonage for the dentists by whom they are employed.

9. This Court in its opinion stated:

"They (the laboratories) are dependent exclusively upon the customers a licensed dentist may send to them." Such is not the case because in practice the customer does not visit the laboratory under any circumstance. It is the denture, bridge or appliance that is sent to the laboratory, when the dentist does not have his own, and the denture, bridge or appliance, after being processed is returned to the dentist by whom it was sent.

Laboratories not associated with a dental office are a business grown out of a need for auxiliary personnel to do technical work on materials for the dentist that enables the dentist to devote more time to operative procedures. It is to the dental profession what a biologican and pathological laboratory is to the medical profession. Each denture, bridge, or appliance, etc., is a distinct and separate piece of work—it cannot be fabricated by an established formula such as grinding lenses, etc. The laboratory assumes no responsibility to the patient, but is answerable only to the dentist for whom the services are performed. Of the more than one hundred dental laboratories operating in the State of Connecticut, only two or three, including the plaintiff, advertise by newspaper to the public that they deal directly with the public.

Respectfully submitted,

The Defendants

By: WILLIAM L. BEERS,
Attorney General,

By: LOUIS WEINSTEIN,
Assistant Attorney General,
Their Attorneys.

Filed September 17, 1954.

No. 404. AMSEL ET AL., DOING BUSINESS AS AMSEL DENTAL LABORATORY, *v.* BROOKS ET AL., MEMBERS OF THE DENTAL COMMISSION OF CONNECTICUT. Appeal from the Supreme Court of Errors of Connecticut. *Per Curiam:* The appeal is dismissed for the want of a substantial federal question. *Margaret Driscoll* and *John J. Darcy* for appellants. *William L. Beers,* Attorney General of Connecticut, and *Louis Weinstein,* Assistant

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Attorney General, for appellees. Reported below: 141 Conn. 288, 106 A. 2d 152.